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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
Montco Research Products, Inc.,	)	Docket No. RCRA-83-165-R-KMC
	)	
Respondent	)	

Resource Conservation and Recovery Act. -- Failure to file prompt response with information requested by EPA pursuant to Section 3007 constitutes a violation and is subject to a Section 3008 action for civil penalty, even though Respondent may believe it is no longer a generator, treator, storer and disposer of hazardous wastes which are characterized as toxic.

Appearances:

Joe C. Miller, II, Esquire
Miller, Shine & Traynor
P. O. Box 803
Palatka, Florida 32078

Counsel for Respondent

Andrea E. Zelman, Esquire
Barry P. Allen, Esquire
Office of Regional Counsel
U. S. EPA, Region IV
345 Courtland St., NE
Atlanta, GA 30365

Counsel for Complainant

INITIAL DECISION

Honorable Edward B. Finch
Chief Administrative Law Judge

This is a proceeding brought pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or The Act), 42 U.S.C. §6928. Section 3008 of RCRA provided[1/] in pertinent part:

> (a) Compliance Orders - (1). . .[W]henver on the basis of any information the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance immediately or within a specified time period. . . .
>
> * * *
>
> (c) . . .Any order issued under this section may . . . assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.
>
> * * *
>
> (g) . . .Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed $25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

1/ Any references to RCRA are to the Act as it was in effect in November 1982, when EPA issued a §3007 information request to the Respondent, and in September 1983, the time at which this Complaint and Complaince Order was issued. In November 1984, Congress enacted the Hazardous and Solid Waste Amendments of 1984, Pub.L.No. 98-616, 98 Stat. 3221 (1984), (HWSA), which significantly amended RCRA. One change brought about by HSWA was a revision and reorganization of Section 3008, 42 U.S.C. §6928. Thus, the authority to assess penalties which is cited in the text below as it was formerly found at §§3008(c) and (g) can now be found at §§3008(a)(1), (3) and (g). See 42 U.S.C. §6901 et seq. (1984).

This proceeding was initiated on September 8, 1983 by the issuance of a Complaint, Compliance Order and Notice of the Right to Request a Hearing, by the Regional Administrator, United States Environmental Protection Agency (EPA), Region IV, Atlanta, Georgia. The Complaint alleges that Respondent Montco Research Products, Inc. (Montco) violated a provision of Section 3007 of RCRA. Specifically, the Complaint cites Montco for failure to comply with information requests issued by EPA pursuant to Section 3007 of RCRA, 42 U.S.C. §6927. The Compliance Order required that Montco submit within thirty (30) days following receipt of the order a complete response to an information request which had previously been issued by EPA. In addition, the EPA, in the order, assessed a civil penalty of $5,000 for Montco's failure to comply with the §3007 information request.

The Respondent submitted the requested information on October 10, 1983, in response to the order. The Respondent did not pay the penalty assessed in the order, but requested a hearing and therefore a hearing was held in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. Following the opportunity for the parties to settle informally, an exchange of information was ordered. The parties exchanged lists of witnesses expected to be called, proposed exhibits, and additional information regarding this matter. On September 27, 1985, a hearing on the matter was held in Palatka, Florida.

Following the availability of the hearing transcript, the parties filed and exchanged initial submissions of findings of facts, conclusion of law,

briefs in support thereof and replies. In addition, both Complainant and Respondent filed motions to dismiss or for an accelerated decision, and responses thereto. In rendering this Initial Decision, I have carefully considered all of the information in the record. Any proposed findings of fact or conclusions of law inconsistent with this decision are rejected.

Findings of Fact

1. Respondent, Montco Research Products, Inc., manufactures specialty chemical intermediates at a facility located at Janice Drive, Hollister, Florida (EPA Ex. 4, EPA Ex. 5, Tr. 88-89).

2. On February 11, 1981, Montco submitted to EPA a Notification of Hazardous Waste Activity as required by Section 3010 of RCRA. The notification indicates that Montco is a generator, treater, storer and disposer of hazardous waste(s) which are characterized as toxic. (EPA Ex. 5, Tr. 17-20).

3. On March 4, 1981, Montco submitted to EPA a Part A RCRA Permit Application indicating that Montco would treat, store, or dispose of hazardous wastes. (EPA Ex. 4, Tr. 16-19).

4. On August 20, 1981, Kathryn L. Ebaugh, an attorney for Montco, notified EPA by letter that Montco would operate as a small quantity generator pursuant to Part 261.5 of the regulations promulgated in accordance with RCRA, 40 CFR §261.5. In addition, in that letter Ms. Ebaugh notified EPA that Montco stored hazardous waste at its facility. (EPA Ex. 6, Tr. 20-23).

5. By letter dated November 4, 1982, EPA submitted a §3007 information request pertaining to solid wastes produced during the manufacture of chlorinated organic chemicals to Respondent's Hollister, Florida office. (Stipulation of the Parties, 9-27-85).

6. The §3007 information request referred to above was in the form of a questionnaire and was designed to elicit information which would aid EPA in identifying hazardous wastes and in developing appropriate waste management standards. (EPA Ex. 1, Tr. 27).

7. The §3007 information request specified that it was to be returned within 45 days from the date of its receipt. (EPA Ex. 1, page 1 of "RCRA Section 3007 Questionaire").

8. By letter dated March 22, 1983, EPA informed Respondent that the response time to the §3007 request had expired and requested Respondent to inform EPA of Respondent's intentions. The following dissertation is presented primarily to elaborate on the importance of filing annual reports and the necessity of strict enforcement thereof.

Discussion

EPA sent to Montco a §3007 questionnaire regarding solid wastes produced during the manufacture of chlorinated organic chemicals at Montco's Hollister, Florida facility. The information was sought for the purpose of identifying hazardous wastes and for developing appropriate waste management standards. Montco did not complete and return the questionnaire within the 45 day period specified on the document. On March 22, 1983, EPA informed Montco by letter that the response time for the §3007 information request had expired and asked

Montco to inform EPA of its intentions regarding a response. In subsequent telephone conversations with respresentatives of Montco, EPA reemphasized that a response to the information request was mandatory. In October 1983, Montco submitted a completed questionnaire in response to the Complaint and Compliance Order referenced above. However, Montco refused to pay the assessed penalty of $5,000 and, therefore, a hearing was held on this matter on September 27, 1985.

Montco does not dispute the fact that it failed to comply with the §3007 information request. Rather, Montco asserts that it did not believe that it was required to do so. In a letter dated October 10, 1983, and accompanying its completed questionnaire, Montco asserted that the §3007 questionnaire was designed with only those companies in mind who handle RCRA-identified hazardous wastes. Since Montco was of the belief that it did not handle such wastes, it likewise did not believe that its response to the questionnaire was required. In addition, Montco asserts that the penalty assessed in the Complaint and Compliance Order for its failure to comply with the §3007 information request was subsequently waived by EPA.

I. Statutory Frameworks

In 1976, Congress determined that the improper management of hazardous waste posed a serious threat to public health and welfare and to the environment.[2/] To address that threat, Congress enacted in 1976, and subsequently amended in 1980 and 1984, the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. Subtitle C of RCRA, at Sections 3001 through 3019,

2/ Section 1002 of RCRA, 42 U.S.C. §6901.

provides for a comprehensive statutory and regulatory framework for the control of the generation, transportation, treatment, storage, and disposal of hazardous waste.

Section 3001 of RCRA, 42 U.S.C. §6921, requires that EPA promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes subject to regulation.

Section 3010 of RCRA, 42 U.S.C. §6930, required that any person generating or transporting hazardous wastes or owning or operating a facility for the treatment, storage or disposal of such identified hazardous wastes was to notify EPA of such activity by August 19, 1980.

Section 3007 of RCRA, 42 U.S.C. §6927, requires that any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of EPA, furnish information relating to such wastes.

Section 3008 of RCRA, 42 U.S.C. §6928, provides EPA with the enforcement authority to order compliance with the requirements of Subtitle C and the regulations promulgated thereunder. In addition, Section 3008 includes the authority to assess civil penalties for past and current violation of any requirement of the subtitle.

II. Arguments

A. Respondent was required to furnish information to EPA, pursuant to §3007 of RCRA, relating to the wastes at its facility.

1. §3007 of RCRA requires that anyone who generates, stores, treats, transports, disposes of or otherwise handles or has handled hazardous wastes shall furnish information relating to such wastes upon request by EPA.

Section §3007(a), 42 U.S.C. §6927(a) provides in pertinent part:

> . . .For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of. . .the Environmental Protection Agency. . .furnish information relating to such wastes. . . .

2. <u>EPA sought Montco's response to the §3007 questionnaire at issue here for purposes of developing or assisting in the development of a regulation(s) of Subtitle C or for enforcing the provisions thereof</u>.

In the November 4, 1982 cover letter which accompanied the §3007 questionnaire at issue here, John P. Lehman, Director of the former Hazardous and Industrial Waste Division of EPA, stated:

> . . .(T)he Office of Solid Waste is conducting industry studies to establish an extensive information base on waste characterization and management practices. This information will become the basis for identifying hazardous wastes and for developing appropriate waste management standards. . . .
>
> . . .Your response to these questions will aid the Agency in deciding:
>
> a. if one or more of the residuals pose a substantial present or potential hazard to human health or the environment and thus should be listed as hazardous wastes in future regulations;
>
> b. that a residual does not pose such a hazard to human health or the environment, even if mismanaged, and thus should not be listed; or
>
> c. that the information currently available is insufficient to make either of the above decisions and further studies should be conducted. . . .
>
> (EPA Exhibit 1, page 1 of November 4, 1982 letter.)

As noted earlier, RCRA charges EPA with the important responsibility of identifying and developing standards for the management of hazardous waste. To aid in that effort, EPA is authorized to seek information from those who handle or have handled such wastes. The language cited above from the letter to Respondent makes clear, and provided ample notice to Respondent, that the information EPA sought from Respondent was, in fact, sought for this statutorily-authorized purpose.

3. Respondent is a person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes.

On February 11, 1981, Respondent notified EPA that it generated and treated, stored and/or disposed of hazardous waste with toxic characteristics. (EPA Ex. 5). On March 4, 1981, Respondent submitted a Part A permit application on which it responded affirmatively to the question, "Does or will this facility treat, store, or dispose of hazardous wastes?" (EPA Ex. 4, Part II E). In addition, on August 20, 1981, an attorney for Respondent notified EPA that Montco intended to operate as a small quantity generator of hazardous wastes, and that Montco had stored such wastes at its facility. (EPA Ex. 6).

Such evidence strongly suggests that Montco has generated and treated, stored and/or disposed of hazardous wastes at its facility, thus placing it clearly within the definition of those persons who are subject to the requirements of §3007. It is important to note that that definition is broadened by the language of §3007 itself, which includes within its scope anyone who ". . .otherwise handles or has handled hazardous wastes. . .". Such language places no threshold limitation on the quantity of waste handled, or the time

period during which such waste was handled. Thus, even if Montco generated only a small amount of hazardous wastes for a very short period of time, it would still be a facility subject to the provisions of §3007.

4. Respondent's argument that the §3007 questionnaire was not applicable to its facility is contrary to the nature and purposes of RCRA.

Respondent seems to argue that subsequent to the time it submitted to EPA documents regarding hazardous waste activity at its site, it made the determination that its wastes were, in fact, not hazardous. Therefore, Respondent asserts, it was not required to comply with the provisions of §3007.

Acceptance of such an argument would thwart the effectiveness of RCRA and, particularly, of Section 3007. While the Act gives EPA chief responsibility for the development of a hazardous waste management system, RCRA also leaves the EPA dependent, to a large extent, on the self-reporting of the industries which may be subject to its regulations.[3/] To suggest that a facility should be given broad latitude to make an independent determination as to whether it should comply with a request for information made by the EPA would leave the Agency with significantly less authority than that which is necessary the Agency have in order to meet its responsibilities under the Act.

It is important to note that it is EPA which is charged with the responsibility for identifying and listing hazardous wastes and for developing

3/ See, e.g., Section 3010 of RCRA, 42 U.S.C. §6930, which requires self-notification of hazardous waste activity.

hazardous waste management standards.[4/] In order for the EPA to meet this responsibility, it is obviously necessary for the Agency to accumulate any available information regarding waste characterization and waste management practices. In fact, the very language of the information request sent to Respondent clearly stated that the information was being sought for such purposes. (EPA Ex. 1, page 1 of November 4, 1982 letter.) Respondent argues that it decided not to comply with the request because it determined that its wastes were not hazardous, even though Respondent had notice that the information EPA sought was being sought for the very purpose of aiding the Agency in determining just which wastes were, in fact, hazardous! Taken to its logical extreme, Respondent's argument would shift to potential members of the RCRA-regulated community the authority to determine whether, in fact, they should be regulated; and leave EPA powerless to acquire the information to determine otherwise.

5. Respondent's argument that the §3007 information request carried with it the option to comply or not to comply is contrary to well-established principles of statutory construction and interpretation.

Respondent argues that the use of the term "request" in the language of §3007(a) of RCRA, 42 U.S.C. §6927(a) implies that a response to such a request is optional in nature rather than mandatory. Respondent seems to ignore the fact that the language of §3007(a) states that those who handle or have handled hazardous wastes ". . .shall, upon request. . .[EPA]. . .furnish information relating to such wastes. . ." (emphasis added).

4/ See Sections 3001, 3002, 3003, 3004 of RCRA, 42 U.S.C. §§6921, 6922, 6923, 6924.

Respondent, in making its argument, ignores the decisions of countless courts which have consistently held that the use of the phrase "shall" in a statute is generally regarded as making a provision mandatory. See, e.g., Escoe v. Zerbst, 295 U.S. 490 (1935), Manatee County, Fla. v. Train, 583 F.2d 179 (5th Cir. 1978), Sierra Club v. Train, 557 F.2d 485 (5th Cir. 1977), Association of American Railroads v. Costle, 562 F.2d 1310 (D.C. Cir. 1977).

A holding consistent with such interpretations is particularly appropriate here, where as noted earlier, the purpose of the statute would be thwarted if the decision whether to respond to a §3007 information request was left to the discretion of the person from whom the information was requested. It is a well-established principle of statutory construction and interpretation that a statute will not be given a construction by which its effectiveness would be seriously impaired. See, e.g., National Petroleum Refiners Association v. F.T.C., 482 F.2d 672 (D.C. Cir. 1973), where the United States Court of Appeals for the District of Columbia stated:

> In determining the legislative intent, our duty is to favor an interpretation which would render the statutory design effective in terms of the policies behind its enactment and to avoid an interpretation which would make such policies more difficult of fulfillment. . . .
>
> 482 F.2d at 689.

It was clearly the intent of Congress, in enacting RCRA, to require EPA to identify and list hazardous wastes, and to enable the Agency to acquire the information necessary to perform that task. An intepretation of §3007 which would significantly limit the Agency's authority to gather such information, as Respondent's interpretation would do, would likewise limit EPA's ability to effectuate the policies and purposes of RCRA, itself.

B. Respondent's failure to respond to a §3007 information request constituted a violation of a requirement of Subtitle C, making the issuance of a Compliance Order appropriate and subjecting Respondent to the assessment of civil penalties pursuant to Section 3008 of RCRA.

In cases where requests for information are rebuffed, the EPA's remedies are governed by Section 3008 of RCRA, 42 U.S.C. §6928. United States v. Liviola, 605 F.Supp. 96, 99 (N.D. Ohio 1985). Section 3008(a) provides EPA with the authority to issue Complaince Orders whenever the Agency determines that any person is in violation of any requirement of Subtitle C of RCRA, while Sections 3008(c) and (g) provided the authority to assess civil penalties for such violations.[5/]

It is clear that Section 3007(a) of RCRA, 42 U.S.C. §6927(a) imposes a requirement of Subtitle C of the Act. United States v. Liviola, 605 Supp. at 100. Therefore, Respondent's violation of that requirement made the issuance of a §3008(a) Compliance Order appropriate. In addition, Respondent's violation of Section 3007 subjects it to the assessment of civil penalties pursuant to former Sections 3008(c) and (g) of RCRA, 42 U.S.C. §§6928(c) and (g).

C. The Penalty of $5,000 assessed in the EPA Complaint and Compliance Order is reasonable in light of the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

Section 3008(c) of RCRA, 42 U.S.C. §6928(c) provided[6/] that penalties assessed in Compliance Orders must be ". . .reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements."

5/ See footnote 1/, supra.

6/ See footnote 4/, supra.

In addition, Respondent admits that it received a letter from EPA regarding its failure to comply, and had two telephone conversations with representatives of the Agency in which Respondent was informed of the mandatory nature of the request. Again, Respondent refused to comply. In fact, it was not until the EPA issued a Complaint and Compliance Order that Respondent finally responded to the information request. This occurred almost one year after Respondent received the request for information.

Section 3008(g) of RCRA, 42 U.S.C. §6928(g), limits penalties for violations such as this to $25,000 per day of violation. Here, Respondent was in violation of Section 3007(a) for approximtely ten months. In light of the seriousness of this violation, the Respondent's alleged failure to make good faith efforts to comply, and the length of time during which Respondent violated the requirement, the $5,000 penalty proposed in the Complaint and Compliance Order would seem minimum, reasonable and, in fact, quite modest.

D. Respondent failed to show that EPA had waived the penalty assessed for its violation of Section 3007.

Respondent has raised the argument that the EPA, by agreement, waived the penalty assessed in the Complaint and Compliance Order. In support of that argument, Respondent offers a letter it deems representative of such an agreement. (Resp. Ex. 1). Yet, nowhere in the piece of evidence offered by Respondent is there any mention of a waiver of penalties. Rather, the letter mentions only the tolling of time for response to the Complaint and Compliance Order. Such tolling would affect the EPA's authority to assess

penalties for noncompliance with such an order,[7/] but would not serve to waive the penalty assessed pursuant to former Sections 3008(c) and (g), 42 U.S.C. §§6928(c) and (g).

A former attorney for Respondent also offered testimony in support of the argument that EPA had waived the penalty. Complainant states that testimony is inconsistent with the letter described which Respondent admits he drafted himself in order to memorialize the agreement made with EPA. Again, that letter included no mention of a waiver of the penalty. This letter and testimony, however, were unrebutted by Complainant at the hearing or in the record.

It seems obvious that Respondent's "agreement" with the EPA lacked a meeting of the minds. Respondent and Complainant placed different meanings upon the letter and telephone conversations. Respondent did not offer evidence demonstrating an intent on EPA's part to waive the penalty. In fact, the very fact that EPA went forward with this proceeding demonstrates quite clearly that the Agency felt that a penalty for the violation of RCRA was appropriate and that EPA intended to continue to seek payment of such penalty.

The facts set forth by Respondent in support of its case are, as follows:

Montco Research Products, Inc., hereinafter referred to as Montco, is a chemical company located in Hollister, Florida. The owner and President of Montco is Maurice Miville.

7/ Prior to 1984, that authority was found at Section 3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3), and is currently found at Section 3008(c), 42 U.S.C. §6928(c).

On November 4, 1982, the Environmental Protection Agency (EPA) sent a letter to Montco. (EPA Ex. 1)

This letter requested that an attached questionnaire be filled out as part of information being gathered under Section 3007 of RCRA.

Mr. Miville consulted with counsel and determined that a response to the questionnaire was not necessary because Montco was neither producing nor storing hazardous wastes at this time. (Tr. p. 66, line 8)

The products which were handled and manufactured by Montco at this time were neither listed as hazardous wastes, nor did they have the characteristics of a hazardous waste. (Tr. p. 48, line 12)

Penalties for not returning the questionnaire were not mentioned in the questionnaire, just as they had not been mentioned in the corresponding letter. (EPA Ex. 1)

On March 22, 1983, the EPA sent Montco and Mr. Miville another letter confirming that the questionnaire had been sent. The second line of the first paragraph of this letter stated that the 45 day response time established a due date of December 25, 1983.

The March 22, 1983 letter requested that Mr. Miville contact Mr. Ed Abrams to inform him of his intent regarding completion of the questionnaire. (EPA Ex. 2)

Mr. Miville called Ed Abrams of the EPA to inform him of Montco's intentions regarding the questionnaire on March 28, 1983.

Nothing in the March 22, 1983 letter, or the subsequent telephone conversations between Mr. Miville or his counsel and Mr. Abrams indicated

that Montco would be penalized with a $5,000 fine for not answering the questionnaire.

Montco reiterated its position that the questionnaire did not apply to them because Montco's wastes were not listed, nor did they have the characteristics of hazardous wastes to come under the scope of RCRA §3007. (EPA Ex. 3)

On September 8, 1983, the EPA issued a Complaint and Compliance Order, ordering Respondent to submit a full and complete response to the §3007 information request, and assessing a $5,000 penalty for its past failure to answer the questionnaire. The Complaint and Compliance Order established a period of 30 days in which to submit a response to the §3007 information request.

Paragraph 18 of the Complaint and Compliance Order issued by the EPA discussed the EPA's policy of encouraging settlement through informal conferences and that through such conferences, the EPA may dismiss any or all allegations.

Attorney Keith M. Casto's name was given in the Compliance Order as the person to whom requests for conferences should be addressed.

On September 21, 1983, Montco's attorney, Herbert M. Webb, called Mr. Casto concerning the $5,000 penalty assessed. Mr. Webb testified that he wished to have a hearing if the EPA was serious about penalizing Montco. (Tr. p. 71, line 7)

Mr. Webb testified that he and Mr. Casto made an agreement that if Montco answered the questionnaire within the 30 day time limit, all penalties would be waived. (Tr. p. 71, lines 4-12)

The Complaint and Compliance Order was signed September 8, 1983. The telephone conversation between Montco's counsel, Herbert M. Webb and EPA representative, Keith Casto took place on March 21, 1983. (Resp. Ex. 1) Montco responded to the questionnaire on October 10, 1983 within the time period provided for.

Nothing contained in the November 4, 1982 letter and questionnaire from the EPA would indicate that failure to answer the questionnaire would subject the company to fines.

In fact, the first line of the closing paragraph of the letter read, as follows: "Your cooperation and assistance in this effort will be sincerely appreciated." (EPA Ex. 1)

The letter failed to state that the alternative to gaining appreciation from the EPA was risking the imposition of a $5,000 penalty if Montco did not respond within 45 days.

In fact, the only place in this initial correspondence that mentioned a 45 day time limit, was one line on the questionnaire above the address to which a response was to be sent which read, as follows:

"Return within 45 days from date of receipt to:"

The next communication from the EPA was the March 22, 1983 letter which confirmed that the questionnaire had been sent. This letter stated that the response time established a due date of December 25, 1983. (EPA Ex. 2)

While it is easy enough to put the facts together now to establish that this date was an error on the part of the EPA, the letter served to interject a certain amount of confusion into the process.

There was still no mention of a $5,000 penalty in this letter or the subsequent telephone conversations between Mr. Miville or his counsel and Ed Abrams of the EPA (EPA Ex. 3)

Section 3008(a) of RCRA, 42 U.S.C. §6928(a) provides that the EPA may issue an order requiring immediate compliance to any person who is in violation of any requirements of §3007 of RCRA.

If Montco's alleged violation of §3007 was serious enough to warrant a $5,000 penalty, the EPA should have issued a compliance order which threatened penalties and provided the opportunity for a hearing immediately after the 45 day response time had expired. Instead, the EPA sent letters and engaged in telephone conversations as if the matter was negotiable.

Then the Complaint and Compliance Order was issued with a penalty already assessed.

Montco complied with the order within the time period provided after its counsel, Herbert M. Webb, reached an agreement with Keith Casto, which was that if Montco answered the questionnaire, all penalties would be waived. (Tr. p 71)

Montco did, in fact, answer this questionnaire within the time period allowed; therefore, no penalty should be assessed against Montco.

There is no question concerning the seriousness of a generator of hazardous waste to file the reports which are the subject of this proceeding. These reports constitute a primary mechanism for enforcement of this critical legislation.

As stated by Complainant, it is incumbent upon generators, etc., to give serious thought to any idea of not filing the report. The facts

elicited at the hearing indicated that serious thought was given to this procedure. Several telephone calls were made by counsel for Respondent to counsel for EPA. Complainant did not rebut the testimony of Mr. Herbert M. Webb as to the understanding reached in these telephone calls, although given the opportunity to request a reopening of the hearing. Based upon this fact alone, the penalty proposed herein of $5,000.00 is reduced to $500.00 and is hereby assessed.

Conclusions of Law

1. Section 3007 of RCRA, 42 U.S.C. §6927, provides that for the purposes of developing or assisting in the development of any regulation or enforcing the provisions of RCRA, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the EPA, furnish information relating to such wastes.

2. Respondent, Montco Research Products, Inc., generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes at its Hollister, Florida facility.

3. Respondent, by failing to furnish information, upon request by EPA, relating to wastes at its facility, violated a requirement of §3007(a) of RCRA, 42 U.S.C. §6927(a).

4. The violation set forth in paragraph 3 above, subjected Respondent to the assessment of a civil penalty pursuant to former Sections 3008(c) and (g) of RCRA, 42 U.S.C. §§6928(c) and (g).

5. Section 3008(c) of RCRA, 42 U.S.C. §6928(c) required EPA in assessing such a civil penalty to take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

6. Based on the evidence presented at the adjudicatory hearing on September 27, 1985, in Palatka, Florida, the Proposed Findings of Facts and Arguments submitted herein, it is concluded that Respondent violated Section 3007 of RCRA by failing to file the information requested by EPA as alleged in the Complaint.

O R D E R [8/]

I hereby find Respondent in violation of Section 3007 of RCRA, 42 U.S.C. §6828 as alleged in the Complaint filed by the Complainant EPA, and a civil penalty of Five Hundred Dollars ($500.00) is hereby assessed against Respondent.

8/ Unless an appeal is taken pursuant to the rules of practice, 40 CFR 22.30, or the Administrator elects to review this decision on his own motion, the Initial Decision shall become the final order of the Administrator. See 40 CFR 22.27(c).

Respondent shall within thirty (30) days of the effective date of this Order pay a civil penalty of Five Hundred Dollars ($500.00). The amount of the penalty shall be paid by cashier's check or certified check made payable to the United States Treasury, and delivered to:

The Citizens and Southern National Bank
U. S. EPA, Region IV
(Regional Hearing Clerk)
P. O. Box 100142
Atlanta, GA 30384

Edward B. Finch
Chief Administrative Law Judge

Dated: March 4, 1986

Washington, D. C.

CERTIFICATION

I hereby certify that the original of this Initial Decision was hand-delivered to the Hearing Clerk, U. S. EPA, Headquarters, and that three copies were sent by certified mail, return receipt requested, to the Regional Hearing Clerk, U. S. EPA, Region IV, for distribution pursuant to 40 CFR 22.27(a).

Leanne B. Boisvert
Legal Staff Assistant

Dated: March 4, 1986